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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/719,142 | 12/08/2000 | Bernard Charles Sherman | PT-1877000 | 5119 |

23607 7590 10/30/2003

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EXAMINER

SPEAR, JAMES M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1615

DATE MAILED: 10/30/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/719,142

Applicant(s)

SHERMAN, BERNARD CHARLES

Examiner

James M Spear

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 June 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-11.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: SEE ATTACHED

James M. Spear
James M Spear
Primary Examiner
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While applicants feel there is no motivation to combine references (Sims in view of Stuerzebecher and further in view of Kararli) in the 103 rejection it is apparent that Sims et al alone at least meets the limitations of claim 1. While the claim reads a tablet comprising a shell in which is imbedded two smaller tablets, the scope of the claims reads on an admixture formulated into a tablet. How a composition is made is not a basis for determining patentability of composition claims. No criticality is shown in claiming 2 small tablets. The size of the components providing the active agents does not distinguish over the prior art. Sims et al teaches that an amount of NSAID and an amount of misoprostol may be incorporated into a tablet. These amounts would be dispersed in a manner equivalent to applicants, since both applicants' and Sims et al teach admixtures. The comprising language of applicants claim does not exclude additional ingredients. The recitation of a protective shell is not considered critical. No critical amounts ratios or thickness is claimed. Applicants disclose microcrystalline cellulose as the primary protective shell forming component. Example 3. It is believed that the cellulose excipients of the Sims et al reference would impart an equivalent protective effect as applicants' microcrystalline cellulose. Column 5, lines 1-22. The scope of applicants' claims is considered to read on the Sims et al prior art of record.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M Spear whose telephone number is 703 308 2457. The examiner can normally be reached on Monday thru Friday from 6:30 AM to 3 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page, can be reached on (703) 308 2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1235.

10/29/2003



James M Spear
Primary Examiner
Art Unit 1615